

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6012

IN THE MATTER OF:

Served October 4, 2000

Application of AM-VAN, INC.,)
Trading as AAA TRANSPORT and ALL)
AMERICAN AMBULANCE & TRANSPORT,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2000-70

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. Applicant is licensed by the Maryland Public Service Commission (MDPSC) as Carrier No. 1195. The application is unopposed.

Applicant's president and sole shareholder, James S. Fowler III, also is the president and sole shareholder of Fowler Trio, L.L.C., a Maryland limited liability company trading as AAA Transport and All American Adventures and Tours. Fowler Trio is licensed by the MDPSC as Carrier No. 2275. In addition, Mr. Fowler is the president and sole shareholder of J & J Transportation, L.L.C., a Maryland limited liability company trading as AAA Transport and All American Transit. J & J Transportation is licensed by the MDPSC as Carrier No. 2429. All three of Mr. Fowler's companies have applied for WMATC operating authority.¹

Applications for certificates of authority are governed by Title II of the Compact, Article XI, Section 7. Applications for approval of common control are governed by Article XII, Section 3.

I. CERTIFICATE OF AUTHORITY

Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Applicant proposes commencing operations with five vans. Applicant's proposed tariff contains a base rate plus mileage charges.

Applicant filed a balance sheet as of March 31, 2000, showing assets of \$2,946,242; liabilities of \$2,954,164; and negative equity of \$7,922. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC revenue of \$235,000; other revenue of \$4,000,000; expenses and losses of \$3,827,000; and net income of \$408,000.

¹ See also Case Nos. AP-2000-71 & AP-2000-72.

Although applicant's negative equity raises the issue of applicant's financial fitness, the record supports a finding in applicant's favor. An applicant must demonstrate financial fitness by showing the present ability to sustain operations during its first year under WMATC authority.² Applicant is a going concern projecting a net positive cash flow during the first twelve months of WMATC operations. We have found other carriers financially fit under similar circumstances.³

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder.

Based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

II. COMMON CONTROL

Article XII, Section 3(a)(iii) & (c), authorizes the Commission to approve common control of two or more WMATC carriers, through ownership of stock or other means, if the Commission finds that common control is consistent with the public interest. The public interest analysis focuses on the fitness of the controlling party, the resulting competitive balance, and the interest of affected employees.⁴

The public interest analysis in this case favors approval of Mr. Fowler's common control of Am-Van, Fowler Trio, and J & J Transportation. First, our finding of applicant's fitness permits an inference of the controlling party's fitness.⁵ Second, there should be no adverse effect on competition from Mr. Fowler's decision to enter the market through three separate carriers instead of through one carrier with three separate divisions.⁶ Finally, there should be no adverse effect on employees since according to applicant, any employee of one carrier may work for either of the other two carriers to the extent the employee is qualified.

² In re Logisticare Solutions, LLC, t/a Logisticare, No. AP-99-86, Order No. 5783 (Jan. 13, 2000).

³ E.g., Order No. 5783 (going concern projecting net positive cash flow); In re Senior Citizen Counseling & Delivery Servs., No. AP-99-01, Order No. 5536 (Mar. 2, 1999); (same); In re Southern Comfort Lines, Inc., No. AP-98-41, Order No. 5461 (Nov. 20, 1998) (same); In re Pioneer Coach & Travel, Inc., No. AP-98-13, Order No. 5318 (Apr. 30, 1998) (same); In re Limo. Pleasures, Inc., No. AP-97-64, Order No. 5274 (Feb. 17, 1998) (same).

⁴ DC Code Ann. § 1-2414 (1992); In re Cavalier Transp. Co., Inc., t/a Tourtime America, Ltd., & Tourtime America Motorcoach, Ltd., No. AP-96-21, Order No. 4926 (Sept. 12, 1996).

⁵ In re Chynta Airport Shuttle, Inc., No. AP-98-32, Order No. 5431 (Oct. 14, 1998).

⁶ Cf., In re Laidlaw Transit Servs., Inc., No. AP-98-33, Order No. 5415 (Sept. 25, 1998) (no adverse effect on competition where WMATC carrier decides to expand service in Metropolitan District through subsidiary instead of division).

Each carrier is admonished to keep its assets, books, finances and operations completely separate from those of the others. Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.⁷ Because the three carriers owned by Mr. Fowler share a common trade name, "AAA Transport," and because the Commission has already issued a certificate of authority to another carrier with a similar name, AAA Transport, Inc., WMATC Carrier No. 322, each of Mr. Fowler's companies is admonished to comply with the requirement of Commission Regulation No. 61 that a carrier display its legal name, not just its trade name, on both sides of each revenue vehicle the carrier operates under its WMATC authority.

THEREFORE, IT IS ORDERED:

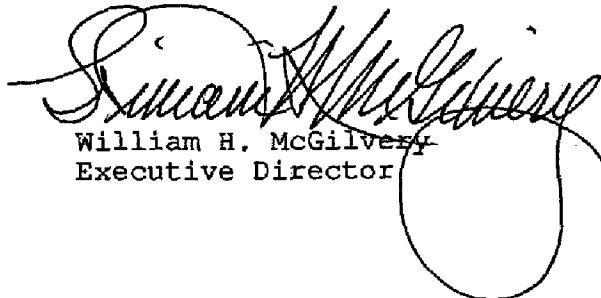
1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 575 shall be issued to Am-Van, Inc., trading as AAA Transport and All American Ambulance & Transport, 1315 Marlboro Road, Lothian, MD 20711.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

4. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:


William H. McGilvery
Executive Director

⁷ Order No. 5431.

